

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: September 17, 2019]

DENISE ANDRADE

v.

THE NEUROLOGY FOUNDATION, INC.

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C.A. No. PC-2018-7699

DECISION

TAFT-CARTER, J. Before this Court for decision is an appeal from a decision by the Rhode Island Department of Labor and Training (the DLT), dismissing a complaint filed by Denise Andrade (Appellant), seeking compensation from her former employer, The Neurology Foundation, Inc. (TNFI), for paid time off (PTO) that she allegedly accrued prior to the termination of her employment. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth herein, this Court affirms the DLT’s decision.

I

Facts and Travel

Appellant was employed by TNFI as its Practice Administrator from March 17, 2003 until May 17, 2016. Respondent’s Ex. 5; DLT Hr’g Tr. (Tr.) 63:20-23, Sept. 12, 2018. During her employment, she was given a copy of the TNFI Employee Manual and signed a form acknowledging that she read and understood its contents and agreed to follow the policies and procedures therein.¹ Respondent’s Ex. 4. According to the Employee Manual, employee benefits

¹ TNFI submitted a copy of the 2006 and 2014 versions of its Employee Manual. See Respondent’s Exs. 1 and 2. However, the material portions of the Employee Manual remain identical in each version. Therefore, this Court refers to the 2014 version of the Employee Manual.

are determined based upon the employee's classification. Respondent's Ex. 2. Throughout her employment at TNFI, Appellant was classified as a salaried, full-time, exempt employee. Tr. 75:9-15.

The Employee Manual provides that PTO is divided into three categories:

“Accrued time: This is paid time off granted to hourly employees who work 32+ hours per week and have completed their ITP.² Accrual rates are based upon the employee's classification and hours worked. . . . Hourly employees may accumulate up to a maximum of two (2) times their annual entitlement.

“Renewed time: This is paid time off granted to salaried employees who have completed their ITP. Paid time off is renewed annually on the anniversary of the employee's hire date. Examples of renewed time include but are not limited to: vacation, personal days, and sick time.

“Nonaccrued time: This is paid time off granted all employees working 32+ hours per week and have completed their three (3) month trial period. . . .” Respondent's Ex. 2, at 15.

The Employee Manual further provides that “[s]alaried employees receive renewed time on the anniversary of their date of hire. The following are the amounts that are added to employee's renewed time balance: . . .” *Id.* at 16. Based on her over thirteen years of tenure with TNFI, Appellant was entitled to receive 28 days of PTO each year on the anniversary of her date of hire. Tr. 86:10-24.

Accordingly, Appellant received 28 days of PTO on March 17, 2016. Between March 17, 2016 and her last day of work on May 17, 2016, Appellant took six days of PTO. Tr. 120:6-12. She was also required to take four days of PTO for a professional conference that she attended. Tr. 120:13-121:23.

² ITP is defined in the Employee Manual as the “Initial Trail [*sic*] Period.” Respondent's Ex. 2, at 4.

On June 3, 2016, Karen Furie, M.D. (Dr. Furie), the President of TNFI and Appellant's former supervisor, sent Appellant a check from TNFI for 18 days of unused PTO that remained at the end of Appellant's employment.³ Tr. 37:20-39:3; DLT Ex. 1. Dr. Furie stated in a letter attached to the check that Appellant was only entitled to 18 days of PTO because salaried employees do not accrue PTO as they receive "renewed time" as defined in the Employee Manual. DLT Ex. 1.

On June 13, 2016, Appellant filed a complaint with the Division of Labor Standards of the DLT, alleging that TNFI failed to compensate her for 75 days⁴ of PTO that she had accrued prior to her termination, amounting to \$24,898.⁵ Non-Payment of Wages Complaint Form, DLT Ex. 1. Appellant later modified the amount requested to \$24,897.60. Tr. 37:12-18.

On September 12, 2018, pursuant to G.L. 1956 § 28-14-19, the DLT conducted a hearing on Appellant's claim. The hearing officer heard testimony from two witnesses: Dr. Furie and Appellant. Appellant appeared *pro se* and did not present any witnesses on her own behalf. Dr. Furie testified that Appellant was a salaried employee of TNFI from the time Dr. Furie began working at TNFI in 2012. Tr. 63:13-23; 68:18-21. She also testified that Appellant was the only

³ Appellant notified TNFI of an error with the check, and TNFI sent her a replacement check on June 30, 2016 in the amount of \$6,916.67. Tr. 39:8-42:23. The parties agree that the June 30, 2016 check represented payment for 21.75 days of PTO, and thus constituted an overpayment as TNFI only intended to compensate Appellant for 18 days of PTO. Tr. 43:2-44:12; 136:3-18. However, TNFI stated at the hearing that it was not seeking reimbursement for the overpayment at this time. Tr. 139:7-14.

⁴ The DLT's decision provides that Appellant filed a complaint seeking compensation for 78 days of accrued PTO. DLT Decision 1. However, in her letter attached to her Non-Payment of Wages Complaint Form, Appellant conceded that she needed to use PTO for attending a 3-day conference, which left 75 days that she was alleging she was entitled to payment for at the end of her employment.

⁵ Appellant received the June 30, 2016 check for \$6,916.67 after filing her initial complaint. At the hearing before the DLT, Appellant agreed to reduce the amount of compensation she is requesting accordingly. Tr. 40:15-24.

salaried, non-physician employee at TNFI. Tr. 70:8-12. Dr. Furie then stated that because Appellant was a salaried employee, she did not accrue PTO. Tr. 89:8-22. Dr. Furie further testified that no salaried employee has carried over PTO from year to year since she began working at TNFI. Tr. 90:20-92:2.

Appellant testified that she interprets the language of the Employee Manual that provides that renewed time is “added to employee’s renewed time balance” to mean that an employee can accumulate renewed time because a contrary interpretation would mean that no balance of renewed time would exist to be “added to.” Tr. 117:16-118:20. Appellant agreed that if she is not entitled to carry over unused PTO from year to year that TNFI does not owe her additional money at this time. Tr. 45:15-46:2.

On September 28, 2018, the hearing officer issued a decision. DLT Decision. The hearing officer found that “TNFI’s policy does not allow salaried employees to accrue PTO.” *Id.* at 3. He also found that “[Appellant] acknowledges that she was a salaried employee and that she received benefits that salaried employees receive.” *Id.* Based on these findings, the hearing officer held that Appellant failed to meet her burden of proving that she was entitled to compensation for 78 days of PTO that she alleged she had remaining on her last day of work. *Id.* at 3-4. Lastly, the hearing officer found that TNFI paid Appellant for her final days of work and the 18 days of PTO that she had remaining and thus, “does not owe [her] any additional wages or PTO.” *Id.* at 4.

On October 25, 2018, Appellant timely filed an appeal of the DLT’s decision with this Court pursuant to § 42-35-15. Compl. In her Complaint before this Court, Appellant requests this Court to find that she was owed unpaid wages pursuant to §§ 28-14-1(4) and 28-14-4(b) and to reverse the DLT’s decision. *Id.* Appellant also requests attorneys’ fees. *Id.*

II

Standard of Review

This Court's review of an agency's decision is governed by § 42-35-15, which provides:

"The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

"(1) In violation of constitutional or statutory provisions;

"(2) In excess of the statutory authority of the agency;

"(3) Made upon unlawful procedure;

"(4) Affected by other error of law;

"(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

"(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."
Sec. 42-35-15(g).

See Iselin v. Retirement Board of Employees' Retirement System of Rhode Island, 943 A.2d 1045, 1048 (R.I. 2008). Accordingly, this Court affords great deference to the agency's factual findings and "may not, on questions of fact, substitute its judgment for that of the agency whose action is under review." *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000) (quoting *Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board*, 650 A.2d 479, 485 (R.I. 1994)). "If there is sufficient competent evidence in the record, the court must uphold the agency's decision." *Id.*; see also *Power Test Realty Co. Limited Partnership v. Coit*, 134 A.3d 1213, 1218 (R.I. 2016). However, questions of law are reviewed *de novo*. *City of Pawtucket v. Laprade*, 94 A.3d 503, 513 (R.I. 2014).

III

Analysis

Appellant asserts in her memorandum that the DLT's interpretation of the Employee Manual was clearly erroneous because the language, "[t]he following are amounts that are added to the employee's renewed time balance," must mean that renewed time can be carried over from year to year. Appellant argues that the hearing officer's interpretation "simply eliminates that clause from the policy at issue." In response, TNFI contends that the hearing officer correctly concluded that "Appellant, as a salaried employee, was not entitled to carry over her PTO" because renewed time is renewed on the anniversary of the employee's date of hire and "[a]ny unused PTO is lost at year-end."

Appellant seeks compensation for unpaid wages pursuant to § 28-14-4. Section 28-14-4 provides:

"Whenever an employee separates or is separated from the payroll of an employer after completing at least one year of service, any vacation pay accrued or awarded by collective bargaining, written or verbal company policy, or any other written or verbal agreement between employer and employee shall become wages and payable in full or on a prorated basis with all other due wages on the next regular payday for the employee." Sec. 28-14-4(b).

Both parties agree that according to the statute, the amount of PTO Appellant is entitled to compensation for upon separation is controlled by the provisions of the Employee Manual. Thus, the sole issue before this Court is whether the hearing officer's conclusion—that the terms of the Employee Manual do not allow salaried employees to carry over unused PTO from year to year—was clearly erroneous.

As the parties do not dispute that the Employee Manual is binding upon them as it pertains to TNFI's PTO policy, this Court will apply the law of contracts when evaluating the hearing

officer's interpretation. *See Botelho v. City of Pawtucket School Department*, 130 A.3d 172, 176 (R.I. 2016) (applying the rules of contract interpretation when analyzing a collective bargaining agreement). When interpreting a contract, this Court should apply “the literal language of the policy absent a finding that the policy is ambiguous.” *Allstate Insurance Co. v. Ahlquist*, 59 A.3d 95, 98 (R.I. 2013) (quoting *Beacon Mutual Insurance Co. v. Spino Brothers, Inc.*, 11 A.3d 645, 649 (R.I. 2011)). “A term in a contract is ambiguous when it is ‘reasonably and clearly susceptible to more than one rational interpretation.’” *Botelho*, 130 A.3d at 176 (quoting *Miller v. Saunders*, 80 A.3d 44, 49 (R.I. 2013)). When the Court is deciding if a contract is ambiguous, it “should read the contract ‘in its entirety, giving words their plain, ordinary, and usual meaning.’” *Young v. Warwick Rollermagic Skating Center, Inc.*, 973 A.2d 553, 558 (R.I. 2009) (quoting *Mallane v. Holyoke Mutual Insurance Company in Salem*, 658 A.2d 18, 20 (R.I. 1995)). Whether a contract is ambiguous is a question of law, and therefore this Court's review of the hearing officer's finding in this regard is *de novo*. *Id.*

Although the hearing officer did not specifically address whether the Employee Manual is ambiguous or not, he found that “a true reading of the Manual does not support [Appellant's] interpretation of the Manual which clearly states that accrual of PTO is a benefit reserved for hourly employees.” DLT Decision 4. However, this Court finds that the language of the Employee Manual is not clear as it does not provide whether or not the ability to accrue PTO from year to year is available to salaried employees and is susceptible to more than one reasonable meaning. *See Haviland v. Simmons*, 45 A.3d 1246, 1260 (R.I. 2012) (finding that an employment contract was ambiguous as to the standard of review for the employee's reappointment because the employer's various communications were susceptible to more than one reasonable interpretation). The Employee Manual provides that hourly employees are granted “Accrued time” and “may

accumulate up to a maximum of two (2) times their annual entitlement.” Respondent’s Ex. 2, at 15. At the same time, the very next section addressing “Renewed time” for salaried employees does not include any language limiting the amount of PTO they may accumulate, which could be interpreted to mean that only hourly employees have the ability to accumulate time greater than the yearly allotment. *See id.* However, the Employee Manual also provides that “[s]alaried employees receive renewed time on the anniversary of their date of hire. The following are the amounts that are *added to* employee’s renewed time balance: . . .” *Id.* at 16 (emphasis added). The words “added to” could be reasonably interpreted to mean that the new amount of renewed time is added to the amount remaining from the previous year. Therefore, this Court finds that language of the Employee Manual is ambiguous.

“[A]lthough contract interpretation is a question of law, when the contract terms are ambiguous, interpretation of the terms becomes a question of fact.” *Botelho*, 130 A.3d at 177-78 (quoting *Inland American Retail Management LLC v. Cinemaworld of Florida, Inc.*, 68 A.3d 457, 464 (R.I. 2013)). As the language of the contract is ambiguous regarding whether salaried employees can accrue PTO, the hearing officer’s interpretation of the Employee Manual is entitled to deference from this Court. *See Johnston Ambulatory Surgical Associates, Ltd.*, 755 A.2d at 805. After reviewing the parties’ exhibits and hearing testimony from Appellant and her former supervisor at TNFI, Dr. Furie, the hearing officer found that Appellant failed to prove that the terms of the Employee Manual allowed her to carry over PTO from year to year. DLT’s Decision 3. Additionally, the hearing officer found that the word “Renewed” meant that the PTO policy for salaried employees “is restarted or begins again each year.” *Id.*

As discussed above, the Employee Manual provides that hourly employees and salaried employees receive two different types of PTO: hourly employees receive accrued time and salaried

employees receive renewed time. Respondent's Ex. 2, at 15. The Employee Manual further states that hourly employees may accumulate accrued time up to two times their annual entitlement. However, this accrual allowance is not provided for salaried employees, which indicates that the parties did not intend for that benefit to apply to salaried employees. Similar to the rules of statutory construction, when a contract includes specific language in one section but excludes it in another section, it can be presumed that the drafter acted intentionally in deciding to include or exclude such language. *See generally In re Proposed Town of New Shoreham Project*, 25 A.3d 482, 525 (R.I. 2011); *see also Kucana v. Holder*, 558 U.S. 233, 249 (2010) (“[W]here [the Legislature] includes particular language in one section of a statute but omits it in another section of the same [a]ct, it is generally presumed that [the Legislature] acts intentionally and purposely in the disparate inclusion or exclusion.”). Thus, the language of the Employee Manual supports the hearing officer's conclusion that salaried employees, unlike hourly employees, are not entitled to accrued PTO from year to year.

Additionally, salaried employees receive PTO in the form of what the policy calls “Renewed time.” As the hearing officer noted, the word “renew” means “to make like new” or “to begin again.” *Renew*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/renew>; *see generally Sponhaur v. Malloy*, 52 N.E. 245, 247 (Ind. Ct. App. 1898) (finding that “renewal” is defined as “the substitution of a new right or obligation for another of the same nature,” as well as “a change of something old for something new”); *Parchen v. Chessman*, 164 P. 531, 532 (Mont. 1917) (“The word ‘renew,’ in a lease providing that the lessee shall have the right to renew the lease, imports a giving of a new lease like the old one, with the same terms, stipulations, and covenants.”). Thus, the hearing officer's interpretation that renewed time starts over each year on the anniversary of the employee's date of hire is reasonable and is

entitled to deference from this Court. *See Johnston Ambulatory Surgical Associates, Ltd.*, 755 A.2d at 805. Therefore, the hearing officer's decision that Appellant was not entitled to accrued PTO from year to year under the Employee Manual was not clearly erroneous and was supported by competent evidence in the record.

IV

Conclusion

For the aforementioned reasons, this Court finds that the DLT's Decision and Order dismissing Appellant's claim for compensation for 75 days of PTO was not clearly erroneous, arbitrary or capricious, or an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Therefore, this Court affirms the DLT's Decision and Order. Accordingly, this Court denies Appellant's request for attorneys' fees.

Counsel is instructed to prepare an appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Cover Sheet

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CASE NO: PC-2018-7699

COURT: Providence County Superior Court

DATE DECISION FILED: September 17, 2019

JUSTICE/MAGISTRATE: Taft-Carter, J.

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